

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Community Development Section****State CDBG Program**

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**CDBG****Community Development Block Grant Program****MANAGEMENT MEMORANDUM****Memorandum Number: 04-03**

TO: All Eligible Jurisdictions and Interested Parties DATE: March 11, 2004

SUBJECT: Question and Answers from the 2004 CDBG General, Native American, and Colonias Application Workshops; the 2003 CDBG Grant Management Workshops; and the 2003 Housing Rehabilitation/Lead-Based Paint/Relocation Workshops.

Purpose of this Memo

To notify all eligible jurisdictions and interested parties of the following:

1. Questions and Answers from the 2003 CDBG Grant Management Workshops, and
2. Questions and Answers from the June 2003 Housing Rehabilitation/Lead-Based Paint/Relocation Workshops.

Q and As from 2003 CDBG Grant Management Workshops**Drug Free Workplace Policy**

Q: Are we required to have the exact wording from the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 et seq.) in our jurisdiction's Drug-Free Workplace policy statement?

A: Yes, the statement must specifically state that "the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace."

Assistance to Native American tribes

Q: Can non-entitlement jurisdictions apply for a General Allocation grant to assist a federally-recognized Native American tribe?

A: State CDBG funds may generally not be used to assist federally recognized tribes, unless the activity is one that benefits other citizens of the jurisdiction. For example, non-entitlement CDBG funds may be used to assist a child care facility located on tribal land if the facility is open to anyone in the jurisdiction, and if the jurisdiction determines that the activity meets its community development needs.

Members of a federally recognized tribe may be assisted if the jurisdiction determines that these members are also residents and citizens of the jurisdiction, and the jurisdiction also provides public

facilities and services used by the members of the federally recognized tribe. The jurisdiction must also determine that this activity meets its community development or housing needs.

Housing Element

Q: How does a jurisdiction demonstrate its compliance with the CDBG housing element requirement?

A: The applicant must demonstrate that the draft housing element has been submitted to and reviewed by the State, and the jurisdiction, after having considered the State's comments, must have adopted the housing element and submitted it to the State for final review. Please contact the Housing Policy Division of HCD for technical assistance.

Housing Rehabilitation

Q: All units of a 4-plex meet the criteria for reconstruction, except that one of the units is uninhabitable and has been vacant for over 12 months. Can we reconstruct all 4 units, or only 3 of the 4 units?

A: We usually review these situations on a case by case basis. When faced with an unusual case, it is always advisable to consult with your CDBG representative before proceeding. In general, the residential structure to be reconstructed must be a structure or unit within a structure with cooking, eating, sleeping, and sanitation facilities ***which has been legally occupied as a residence within the preceding 12 months***. If, after our review of additional information, we determine that it is not practical to reconstruct 3 of the 4 units, then the Department may approve the reconstruction of the entire 4-plex. The main concern is that structures to be reconstructed must have been suitable for habitation, that is, the structure must have cooking, eating, sleeping, and sanitation facilities.

Q: What are the handicapped accessibility requirements for residential units above commercial space?

A: We recommend that you check with the local planning/building department. The cost of installing an elevator or other construction costs associated with accessibility requirements are eligible CDBG expenditures.

Q: The space that is currently being used as an office at an automotive garage (commercial) is being converted to a residential unit. What parts of this building can we rehabilitate under Housing Rehabilitation?

A: The conversion of the office space is not an eligible Housing Rehabilitation activity, but is an eligible New Construction activity. In order to be an eligible "conversion" project under Housing Rehabilitation, the structure being converted must be **vacant**. Also, if the conversion of a vacant structure involves construction beyond the envelope of the original structure, then the project may be New Construction. Please consult with your CDBG representative if this is the case.

Q: If a room in a house to be rehabilitated is rented out, do you count the renter's income?

A: The renter is considered to be part of the household and therefore the renter's **income** would count towards household income, but the amount of the **rent** paid by the renter would not.

Lead-Based Paint

Q: If two employees who work for the same entity become supervisors, could they check each other's projects? It's difficult to find supervisors in our region of the State.

A: This would be a conflict of interest since the inspectors would work for the same entity as the working crew.

Planning and Technical Assistance (PTA) Grants

Q: A list of PTA grants funded used to be posted on the website. It was very helpful. Can you resume these postings?

A: Yes, we are planning to add the list of previously funded PTA grants to our website, as workload permits.

Procurement

Q: When procuring supplies with CDBG funds, what is the cost minimum under which CDBG procurement requirements do not apply?

A: CDBG procurement requirements apply to all purchases with CDBG funds. The purchase of supplies would fall under the Small Purchase procurement method, which may be used for procurement of \$100,000 or less in aggregate.

Program Income (PI)

Note: A number of questions regarding PI were raised during the workshops. Please refer to Management Memorandums No. 03-11 dated November 10, 2003, and No. 03-12 dated November 24, 2003 which describe the current PI policies and addresses the questions raised during the workshops.

Record Retention

Q: What is the record retention requirement for grants being re-monitored?

A: The original record retention requirement (4 years) would still be in effect. The exception would be if additional issues are discovered, then all records must be retained until resolution has occurred.

Relocation

Q: We provide relocation assistance to owner-occupied households. If we only pay for storage fees, do all the relocation forms need to be completed?

A: Since you are not required to provide relocation assistance to owner-occupied households, it is not necessary to complete the forms. However, if it is a CDBG grantee's policy to provide relocation benefits to owner-occupied households, this policy, as well as a list of eligible relocation costs, should be included in the grantee's written relocation policy. The grantee should also document any relocation costs paid.

Q and A's from 2003

Housing Rehabilitation/Lead-Based Paint/Relocation Workshops

Housing Rehabilitation

Q. What kind of training is available for someone who has never done Housing Rehabilitation before?

A. The agency which offers annual training on rehab loan processing and construction management is the Neighborhood Reinvestment Corporation. Their web site, www.nw.org, shows all the training sites and dates. Attending this would be an eligible CDBG cost for grantees.

Q. Is standard nondiscrimination language needed in housing rehabilitation contracts?

A. You must include standard nondiscrimination language in all contracts and subcontracts. This includes rehabilitation contracts between homeowners and (sub)contractors costing more than \$10,000. The language found in Chapter 4 of the CDBG Grant Management Manual should be included in the construction contracts between a homeowner and a contractor. Additional requirements are found in Chapter 4, Section B, "Housing rehabilitation and other construction contracts" in the 2002 GMM, page 4-4.

Relocation Questions

- Q. Is relocating a household due to LBP mitigation considered mandatory?
- A. HUD regulations require temporary relocation of occupants when projects involve lead-based paint hazard mitigation, with certain exceptions (see 2003 Grant Management Manual Chapter 4 for sample relocation plan containing list of exceptions). If the project is a tenant occupied property, then they must receive a general information notice (GIN) as part of the application process and a second notice regarding any relocation benefits they are eligible for once the scope of rehab work is defined and loan is approved. You must pay all relocation benefits for tenants. When temporary relocation is needed, then tenants must be given sufficient benefits so they can move out and move back in again. Owner occupants must also be relocated when lead hazards are mitigated but do not have to be reimbursed for temporary relocation costs, unless the grantee wants to pay some or all of those costs and states this in their adopted temporary relocation plan.
- Q. Is it considered permanent relocation when replacing mobile homes with duplexes (or other mobile homes)? The mobile homes will be destroyed.
- A. Permanent relocation only happens when the occupant of the assisted unit is not able to return their original unit (or similar unit in the project) because it is converted to another use or eliminated or the housing cost of the new unit is not affordable to the occupant. As long as the number of duplex units developed is the same as the number of mobile homes being destroyed and all the occupants of the mobile homes get to move into the new duplex units with affordable rents, then there would be no permanent relocation. If less units were being developed than being destroyed such that occupants would not have a place to rent in the new units, then permanent displacement would take place and replacement units would need to be developed. Under any large rehabilitation project, for example, replacing a number of mobile homes with duplex units (converting a 12 unit mobile home park into six duplex units), then you would be required to do a project specific relocation and anti-displacement plan for that one project. The specific plan would inventory the tenants in the mobile homes and identify those who will be displaced permanently and those who will be relocated temporarily.
- Q. What if people live in illegal units, like garages. Do we relocate them to a comparable unit?
- A. If a person or family lives in an illegal unit, the grantee is assisting that property owner with CDBG funds, and the city requires the elimination of the illegal unit as part of providing the assistance, then the family in the illegal unit will be permanently displaced and will be eligible for permanent relocation benefits. If the city allows for the illegal unit to be converted into a legal unit using CDBG funds, then the family must be noticed and could be eligible for temporary relocation benefits under the rehab program, as long as they are able to stay in their existing unit.

Lead-Based Paint

- Q. Are outbuildings required to be mitigated for LBP hazards? What if part of it is near an area that kids obviously play in/around? Do we just mitigate that one side, or the whole structure (fence, garage, etc.)
- A. HUD requires dwellings to be mitigated for LBP hazards and allows for play areas to be mitigated by covering the area with grass, etc. It would be allowable to stabilize the paint on nearby structures
- Q. Is a Lead Hazard Screen used only in restricted areas? Example: We're only rehabilitating a bathroom. Can we use a LHS only in the bathroom to satisfy the federal LBP regulations?

- A. Lead Hazard Screen is to be used for the entire dwelling, not for just a specific portion of the home. A LHS is an abbreviated version of a risk assessment, albeit with more sensitive LBP hazard threshold levels. If the LHS reveals LBP hazards, then a complete risk assessment is due.
- Q. Is the LBP “Intent” policy still limited to the \$25,000 hard cost cap?
- A. The cap on the “Intent Policy” has been lifted. See chapter 20 in the GMM for more details on implementing the “Intent Policy” in your rehabilitations.
- Q. Do we remove all LBP, just hazards, or LBP affected by the rehab?
- A. While in abatement, or any other mitigation, you are required to mitigate only LBP hazards, not all LBP. Or, if you’re going to create a LBP hazard as a result of the rehabilitation, you would mitigate the areas impacted by the rehabilitation.
- Q. We have a multiple unit building (upstairs, downstairs) on the same property. The property owner will have his unit rehabilitated and mitigated for LBP. The outside of the building has LBP hazards that cross over into the renters (non-TIG) outside. Do we only mitigate the owner’s portion of the building?
- A. In this situation, you would mitigate all hazards on the outside of the building. However, if your project was a duplex with a common wall and separate titles for each dwelling, you would stop at the property line.
- Q. State law (SB460 2002) adds a De Minimis level to the housing law. Does this mean We can now apply the federal de minimis standard as an exemption to working safe?
- A. Yes. Note the circumstances when this is applicable in Chapter 20 of the 2003 CDBG Grant Management Manual.
- Q. Are LBP labs outside the State OK to use?
- A. Yes. As long as the lab is using HUD/EPA guidelines for LBP, then we’re ok with the lab. For example, we understand one California jurisdiction uses a lab in Maryland since it is considerably more affordable than what was found within the state. The paint samples are sent in expedited mail, then the results are read online a short time later.
- Q. Are XRF guns an eligible CDBG cost? What are the restrictions on this?
- A. XRF guns are an eligible CDBG cost; however, there are some restrictions to their purchase and use. Due to the cost, it would be considered a personal property purchase (ref. Grant Management Manual, chapter 19). Ownership is limited to a jurisdiction or a non-profit. Any income derived from its use (such as renting to a contractor) would be considered program income. Also, the sale of the item would be program income (you must follow the disposition rules in the Grant Management Manual, chapter 19), and at grant close-out, out you would have to address the ownership issue. Technically, purchasing an XRF gun would be an activity delivery cost, and as a result, we understand that this may be a disincentive to its purchase. Therefore, each jurisdiction may charge the XRF gun as a grant activity, once every five years. Contact your representative each time you intend to purchase an XRF gun.
- Q. How do we get training materials from HUD?
- A. Go to HUD’s website and click on their “Training” link. They have training curriculum available as downloads as well as contacts to receive material via mail. (<http://www.hud.gov/offices/lead/>) You may also contact HUD at (202) 755-1785, x107 for training materials.